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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,657	08/04/2003	Yoshihiro Nakami	MIPFP046	6349
25920	7590	11/13/2008	EXAMINER	
MARTINE PENILLA & GENCARELLA, LLP			WASHINGTON, JAMARES	
710 LAKEWAY DRIVE			ART UNIT	PAPER NUMBER
SUITE 200				
SUNNYVALE, CA 94085			2625	
			MAIL DATE	DELIVERY MODE
			11/13/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/634,657	NAKAMI, YOSHIHIRO	
	<b>Examiner</b>	<b>Art Unit</b>	
	JAMARES WASHINGTON	2625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 October 2008.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 10-15 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 10-15 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 2, 2008 has been entered.

***Response to Amendment***

Amendments and response received October 2, 2008 have been entered as indicated above. Claims 10-15 are currently pending in this application. Claims 1-9 and 16-30 have been canceled. Amendments and response are addressed hereinbelow.

***Claim Objections***

In light of the amendment clarifying Applicant's intentions in the claimed subject matter, Examiner withdraws objection under 37 C.F.R. § 1.75(a).

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naoki Kuwata et al (US 20020030833 A1) in view of Takashi Nitta (JP 2001186297 A).

Regarding claim 10, Kuwata et al discloses an image processing method that utilizes either of shooting information representing a shooting condition of image data and image

processing control information for specifying an image processing condition of the image data (Fig. 7; Following the flow chart, the image file will contain either “preset output control information”, “image output conditions (i.e., shooting information)”, or both; therefore either or both will be utilized when the file is accessed) reflecting an image output property of an output apparatus (¶ [16] wherein control information includes information for controlling the image data reproduction characteristics at output device. In this case, it is possible to control reproduction characteristics according to the combination of the image data generating apparatus and the output apparatus), either of which is related to the image data (¶ [16] wherein both control information and “image file additional information” are correlated to the image data), as image processing information and thereby makes the image data subjected to a series of image processing in an image processing apparatus (¶ [16] wherein it is possible to give each type of information to the output apparatus according to the combination of the image data generating apparatus and the output apparatus), said image processing method comprising:

acquiring the image data (¶ [99] wherein the printer retrieves and reads the image file); retrieving either of the shooting information and the image processing control information (see Fig. 9 wherein depending on the image data file created in Fig. 7, either control information or image file additional information is contained in the stored image file which is retrieved (obtained) in step S216), either of which is related to the acquired image data, from an image data generating apparatus that is a separate body independent from the image processing apparatus (Fig. 4 depicts the image processing apparatus (24) acquiring the image data from either the storage (225) of the image data generating apparatus (22) which are separate body independent from one another); and

in the case of successful retrieval of the image processing control information (Fig. 7 wherein output control information is available), executing the series of image processing of the image data according to the image processing control information (see above wherein the image file contains the control information which undergoes processing in step S218 of Fig. 9).

Kuwata fails to expressly disclose while in the case of failed retrieval of the image processing control information, executing the series of image processing of the image data based on the shooting information.

Nitta, in the same field of endeavor of retrieving image processing information for processing image data (Patent Abstract of Japan), teaches while in the case of failed retrieval of the image processing control information (Abstract wherein mode information not included in the image file), executing the series of image processing of the image data based on the shooting information (Abstract in which a photographing mode is decided from the photographing parameter of the camera).

It would have been obvious to one of ordinary skill in the art for the method as disclosed by Kuwata et al wherein the image processing can be implemented with either processing control information or shooting information, depending on the image file to utilize the method as taught by Nitta wherein in case of failed retrieval of the image processing control information, the series of image processing will be executed based on the shooting information because the modification would have constituted the mere arrangement of old elements with each performing the same function it had been known to perform, the combination yielding no more than one would expect from such an arrangement.

Regarding claim 11, Kuwata et al discloses an image processing method in accordance with claim 10, said image processing method further comprising:

in the case of successful retrieval of the image processing information, not executing retrieval of the shooting information (see rejection of claim 10 wherein Nitta teaches image processing is performed using the control data and ignores retrieval of additional data).

Regarding claim 12, Kuwata et al discloses an image processing method in accordance with claim 10, said image processing method further comprising:

in the case of failed retrieval of both the image processing control information and the shooting information, executing the series of image processing of the image data according to default image processing control information, which is general-purpose image processing information set for preset image data (¶ [102] wherein normal processing is performed when additional data and control data is not specified; see also Fig. 9 steps 214-226.)

Regarding claim 13, Kuwata et al discloses an image processing method in accordance with claim 10, wherein the executing the image processing to the image data is carried out by converting at least part of the shooting information into image processing control information (¶ [71] wherein additional information comprises shutter speed and exposure; It is understood that these parameters would need to convert to control information for detailing the image processing implemented according to these camera settings) and executing the series of image processing of the image data according to the converted image processing control information (see rejection of claim 10 wherein the processing is carried out).

Regarding claim 14, Kuwata et al discloses an image processing apparatus (Fig. 6 numeral 24 printer) that utilizes either of shooting information representing a shooting condition of image data and image processing control information for specifying an image processing condition of the image data reflecting an image output property of an output apparatus (see rejection of claim 10), either of which is related to the image data, as image processing information and thereby makes the image data subjected to a series of image processing (see rejection of claim 10), said image processing apparatus comprising:

an image data acquisition unit (Fig. 6 numeral 242) that acquires the image data (see rejection of claim 10);

an image processing information retrieval unit (Fig. 6 numeral 246) that retrieves either of the shooting information and the image processing control information, either of which is

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related to the acquired image data by from an image data generating apparatus that is a separate body independent from the image processing apparatus (see rejection of claim 10); and

an image processing unit (Fig. 6 numeral 30 CPU; ¶ [86]) that, in the case of successful retrieval of the image processing control information, executes the series of image processing of the image data according to the image processing control information, while in the case of failed retrieval of the image processing control information, executing the series of image processing of the image data, based on the shooting information (see rejection of claim 1).

4. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuwata et al and Nitta as applied to claim 10 above, and further in view of well known prior art.

Regarding claim 15, Kuwata et al discloses the method as rejected in claim 10.

Kuwata et al fails to disclose a recording medium in which an image processing program causing a computer to implement the method as disclosed in the rejection of claim 10 above.

However, it is clear from the disclosure of the reference that the processing method is carried out by an apparatus. It is well known in the image processing arts that a computer implemented method performed by an apparatus must receive "instructions or program commands" from a program residing on a computer readable medium in order for the apparatus to be operational. (Official Notice)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a program storage medium storing a program which issues program commands, in the invention disclosed by Kuwata et al, to make the apparatus operational.

\*Note – The common knowledge or well-known in the art statement above is taken to be admitted prior art because applicant failed to traverse the examiner's assertion of official notice.

**MPEP 2144.02**

***Response to Arguments***

Applicant's remarks: The Kuwata et al reference discloses a basic application of image processing control information, and therefore the Kuwata et al reference intends to use only the image processing control information. As such, there is no disclosure or suggestion in the Kuwata et al reference regarding the concept of associating shooting information, which is different from the image processing control information, with image data.

The Kuwata et al reference provides no disclosure or suggestion of selecting either shooting information or image processing control information, and also fails to disclose image processing with the shooting information. Above all, if the shooting information is used, this would run counter to reflecting the intention of the user, which is a primary goal of the Kuwata et al reference.

Examiner's response: Kuwata discloses, at ¶ [16], that for the image data generating apparatus, control information can include information for controlling the image data reproduction characteristics at output device. In addition to the output process control information, there may

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exist additional information which is correlated to the image data. This additional information comprises JPEG image shooting conditions such as shooting data and time, exposure and shutter speed ¶ [71]. It is clear that Kuwata teaches both forms of processing information data.

Nitta is used as a secondary reference for teaching using either forms of processing information to carry out image processing according to the user's intentions (see rejection above).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMARES WASHINGTON whose telephone number is (571)270-1585. The examiner can normally be reached on Monday thru Friday: 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, King Poon can be reached on (571) 272-7440. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/King Y. Poon/  
Supervisory Patent Examiner, Art Unit 2625

/J. W./  
Examiner, Art Unit 2625

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Examiner, Art Unit 2625

November 7, 2008